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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: James A. Jamiel
File: B-235158
Date: February 6, 1990

DIGEST

A former Navy member's request for waiver of his debt to the United States arising out of an overpayment of pay for unused leave entitlement is granted. The member questioned the disbursing clerk and the disbursing clerk's supervisor and became convinced that the payment was correct. He therefore was without fault in accepting the erroneous payment.

DECISION

This action responds to correspondence from James A. Jamiel, a former Navy member, appealing the January 27, 1989 determination of our Claims Group denying a request for waiver of the debt he incurred as the result of military pay and allowance overpayments.

We conclude that Mr. Jamiel's request for waiver may be granted.

BACKGROUND

Mr. Jamiel was discharged from the Navy on April 1, 1985. According to the record, Mr. Jamiel's December 1984 leave and earning statement showed a leave balance of 56.5 days as of December 31, 1984. He earned 8 days leave from January 1, 1985 through April 1, 1985, for a total of 64.5 days. The record further indicates that he used a total of 15 days leave from January 1, 1985, through March 8, 1985. Mr. Jamiel's March 31, 1985 leave and earnings statement showed that he was entitled to receive pay for 49.0 days accumulated leave.

Upon his discharge, an administrative error was committed crediting Mr. Jamiel with 60 days unused leave entitlement in the amount of \$4,751.40 instead of the correct 49.5 days

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in the amount of \$3,919.91. As a result, Mr. Jamiel was overpaid \$831.49.^{1/}

Mr. Jamiel applied for a waiver of the indebtedness under 10 U.S.C. § 2774, which was denied by the Navy on September 30, 1988. The Navy concluded that Mr. Jamiel should have suspected an overpayment had been made because every member has a duty to be aware of his approximate leave balance, and a 10.5 day discrepancy is so excessive as to have suggested an overpayment.

Mr. Jamiel appealed the Navy's decision to our Claims Group. He indicated that at the time of discharge he questioned the amount included in his final payment for unused leave, but that after considerable discussion with the disbursing clerk and the Chief Petty Officer (supervisor of the disbursing clerk), he became convinced that they were correct and that he was wrong. The Claims Group sustained the Navy's denial of Mr. Jamiel's request for waiver.

Following our Claims Group's denial of his application for waiver, Mr. Jamiel requested further review and consideration of the matter.

DISCUSSION

A claim against a member or former member of the uniformed services arising out of erroneous payments of pay or allowances may be waived in whole or in part if collection would be against equity and good conscience and not in the best interest of the United States. 10 U.S.C. § 2774(a).

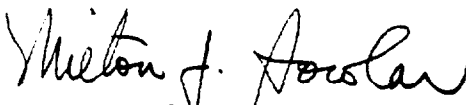
The Comptroller General may not, however, exercise his authority to waive a claim if, in his opinion, there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim. 10 U.S.C. § 2774(b)(1).

"Fault" exists if, in light of all the facts, it is determined that the member should have known that an error existed and should have taken action to have it corrected. George S. Winfield, B-224774, Dec. 8, 1986. Thus, waiver cannot be granted where a reasonable person should have been aware that he or she was receiving payments in excess of his or her proper entitlement. Colonel William J. Frome, USAF (Retired), B-199808, Mar. 23, 1981; see 4 C.F.R. § 91.5.

^{1/} The Navy offset certain amounts due Mr. Jamiel reducing his indebtedness to \$630.87.

It appears from the record that the erroneous payment of unused leave was made due to administrative error on the part of the Navy and not the result of fraud, misrepresentation or a lack of good faith on the part of the member. In fact the member did everything within his power to rectify the erroneous payment by discussing it with the disbursing clerk and the disbursing clerk's supervisor. The fact that he became convinced that he was actually entitled to 60 days leave after these discussions demonstrates, in our view, the absence of fault that is required to support a waiver determination.

Accordingly, we conclude that Mr. Jamiel's request for waiver may be granted.

for 
Comptroller General
of the United States